

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF THOMAS RAY BREEDEN
VS B Docket No. 07-053-0953

MEMORANDUM ORDER

This matter came on October 7, 2010, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Thomas Ray Breedon, based upon the Certification of a Fifth District—Section III Subcommittee of the Virginia State Bar. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Jody D. Katz, lay member, Raighne C. Delaney, Michael S. Mulkey, J. Casey Forrester, and William E. Glover, presiding.

Seth M. Guggenheim, representing the Bar, and Michael L. Rigsby, representing the Respondent, Thomas Ray Breedon, presented an endorsed Agreed Disposition, entered into as of October 6, 2010, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Valarie L.S. May, RPR, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it is the unanimous decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times hereto, Thomas Ray Breedon, (“Respondent”), has been an attorney licensed to practice law in the Commonwealth of Virginia. The Respondent acted through an associate directly supervised by him.
2. On April 12, 2005, Respondent filed a Complaint on behalf of Kristie

Guidry (“Guidry”) against Wendy Clare (“Clare”) in the United States District Court for the Eastern District of Virginia, Alexandria Division (“Court”). The Court dismissed the Complaint, without prejudice, pursuant to the Federal Rules of Federal Procedure, for failure to timely serve the Complaint on the defendant. Subsequently, Respondent assigned the matter to an associate in his office who filed a new Complaint on behalf of Kristie Guidry (“Guidry”) against Wendy Clare (“Clare”) and against Cheer Dynasty, LLC (“Cheer”) on December 27, 2005 in the same Court. Clare was an employee of Cheer and acted as a debt collector for Cheer.

3. The Complaint claimed actual, statutory and punitive damages as well as interest, attorney’s fees, and court costs occasioned by the two defendants’ alleged violations of the Fair Debt Collection Practices Act (“FDCPA”) and their alleged commission of three Virginia torts – intentional infliction of emotional distress, malicious prosecution and false imprisonment. Among the substantive facts that Respondent relied on in filing the first Complaint, and authorizing his associate to file the second Complaint, were that Clare, designating herself as ARA Collections, had filed a criminal complaint against Guidry claiming Guidry had written a bad check to Cheer, and had failed to make good on the check. Clare did not identify herself as an employee of Cheer in either the criminal warrant or at court for the criminal warrant. Guidry claimed that she had already made good on the bad check prior to the criminal complaint being filed.

4. The Court dismissed the Complaint, with prejudice, by Order entered on March 31, 2006, granting the defendants’ motion for summary judgment. Respondent’s associate had failed to timely file a response to Defendant’s summary judgment motion, and the untimely response was stricken by the Court. The associate was given leave at

oral arguments to articulate a basis for the claims, but was unsuccessful in doing so. Thereafter, on August 10, 2006, the Court awarded sanctions to the defendants against “Guidry and her counsel” in the sum of \$16,000.00.

5. *Inter alia*, the Court found as either undisputed facts, or as evidence in the record stated in a light most favorable to the Respondent’s client, Guidry, that

a. Guidry issued a check for insufficient funds to Cheer in the sum of \$62.50 on March 14, 2004;

b. Clare, on behalf of Cheer, contacted Guidry and asked her to make good on the returned check, to which Guidry did not respond. The Court rejected as self-serving Guidry’s contention that she had made good on the check, but was not given a receipt;

c. On May 24, 2004, the representative of an automobile dealer procured a felony arrest warrant against Guidry for a bad check in excess of \$200.00, which warrant commanded the officer executing such warrant to take Guidry into custody;

d. Cheer’s attorney sent Guidry a letter concerning the bad check on June 9, 2004, to which Guidry did not respond; on October 25, 2004, a debt recovery firm sent a letter to Guidry in an effort to collect upon the bad check issued to Cheer;

e. In late December of 2004, Clare and Guidry had a telephone conversation during which Guidry falsely informed Clare that she believed that she had already made good on the check. The Court rejected as self-serving Guidry’s denial that she made any false statement regarding her having already made good on the check and her contention that she had made good on the check;

f. Clare confirmed that Guidry had not in fact paid her debt to Cheer, called Guidry on January 1, 2005, and informed her that she would seek an arrest warrant if

Guidry failed to pay the debt within 72 hours. Following the deadline, Clare filed a criminal complaint for misdemeanor larceny by check;

g. A misdemeanor warrant was issued upon Clare's complaint, which warrant left to the executing officer's discretion whether Guidry was to be arrested or served with a summons;

h. The felony arrest warrant procured on behalf of the automobile dealership and the misdemeanor warrant issued upon Clare's complaint were forwarded to an officer at approximately the same time for execution; at 7:50 p.m. on January 9, 2005, Guidry was taken into custody on the felony arrest warrant. Once Guidry was already in custody, she was arrested, at the officer's discretion, on the misdemeanor warrant issued pursuant to Clare's complaint;

i. Guidry was detained for 19 minutes before being released on her own recognizance, and she was at no time in custody independent of her arrest upon the felony warrant; and

j. Clare's role in Guidry's arrest was limited to the filing of the misdemeanor complaint that led to the issuance of the misdemeanor arrest warrant. Both charges against Guidry were *nolle prossed* in the Prince William County, Virginia, General District Court on a scheduled court date of February 16, 2005, on which date Guidry paid Cheer the \$62.50 and an additional \$30.00 incurred as a bank charge by Cheer when Guidry's check was returned for insufficient funds.

6. In awarding sanctions, the Court found that it was "pellucidly clear that five and one half of [Guidry's] seven FDCPA claims are meritless, indeed flatly frivolous."

The Court found, *inter alia*, that

a. “[t]here is not a scintilla of evidence that suggests that Clare failed to make a ‘meaningful disclosure’ of her identity when she called Guidry”;

b. Guidry’s contention that debt collectors are categorically forbidden from filing criminal complaints was “utterly baseless”;

c. Guidry’s contention that Clare lacked standing to seek a warrant for her arrest was “equally meritless”;

d. “Clare’s representation to the police that Guidry had defaulted on her debt was true and accurate in every respect” and that “Guidry’s allegation that Clare made a false representation to authorities is squarely contradicted by the undisputed facts that would have been evident in the course of any good faith investigation of the facts, as required by Rule 11, Fed. R.Civ.P.”;

e. Guidry’s contention that Clare sought the assistance of authorities to disgrace her was “utterly devoid of any factual or legal basis” and that it was “apparent that [Guidry] asserted this claim for improper purposes and to harass defendants”, making an award of sanctions “appropriate” under Rule 11 and the FDCPA; and

f. It was “pellucidly clear” that Guidry’s claim under the FDCPA that Clare failed to make required disclosures as a debt collector were “squarely contradicted by the record evidence” and that “[n]o reasonable attorney in like circumstances could have concluded otherwise”.

7. The Court found that Guidry’s “state law claims are equally frivolous.” It found that sanctions were warranted under Rule 11 for such claims, to-wit: intentional infliction of emotional distress, malicious prosecution, and false imprisonment.

8. Mitigating factors recognized in the Standards For Imposing Lawyer

Sanctions adopted by the American Bar Association and recognized by the Supreme Court of Virginia are as follows:

a. The Respondent and his associate timely paid the \$16,000.00 sanction without any request to his firm's client that she contribute to the payment or receipt of contribution to the payment from his firm's client or third party.

b. The facts and circumstances of the sanction were widely publicized by *Virginia Lawyers Weekly*.

c. The Respondent enjoys a good professional and personal reputation. The instant matter was brought to the Bar's attention by letter dated September 28, 2006. Therein, the correspondent wrote "It is my understanding that the attorney who is the subject of this inquiry report enjoys a positive reputation in the plaintiff's bar for acting responsibly and aggressively in protecting his client's rights. I would ask the commission act with appropriate discretion in order to protect his professional reputation."

d. The Respondent cooperated fully with, and demonstrated a cooperative attitude towards, the investigation of this matter.

The Board finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provision of the Virginia Rules of Professional Conduct:

RULE 5.1 Responsibilities Of A Partner Or Supervisory Lawyer

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

- (2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Upon consideration whereof, it is ORDERED as that the Respondent shall receive a PUBLIC REPRIMAND, and he hereby is so reprimanded.

Pursuant to Part Six, Section IV, Paragraph 13-9E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that a copy *teste* of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, Thomas Ray Breeden, at his last address of record with the Virginia State Bar, 10326 Lomond Drive, Manassas, VA 20109, and by first class, regular mail to Michael L. Rigsby, Respondent's counsel, Michael L. Rigsby, PC, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, VA 23226, and to Seth M. Guggenheim, Senior Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 12th day of October, 2010.



William E. Glover,
Chair
Virginia State Bar Disciplinary Board